D.B. CIVIL SPECIAL APPEAL NO.89/2006

Smt. Kamla Devi & Ors.
Vs.
Nakta Ram & Ors.

Date of Order :: 11-01-2007

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE GOVIND MATHUR

Shri Lalit Vyas, for the appellant.
Shri U.C.S. Singhvi for the respondents.

This special appeal is directed against the order of the learned Single Judge dated 2.2.2006 in S.B. Civil Misc. Appeal no.43/2000 dismissing the appeal of the appellant.

The appeal had arisen from an award of the Claims Tribunal assessing the compensation at Rs.5,74,680/- payable by the owners, namely, Naktaram and Kanaram. The appellants who are the claimants preferred appeal contending that the compensation may be paid at the first instance by the Insurance Company with liberty to recover the amount from the owners. The learned Single Judge noticed that terms and conditions of the insurance policy had been violated and the Insurance Company had therefore been exonerated of the liability, and there being no contract between the claimants and Insurance Company, the Company cannot be held liable to indemnify the loss.

Counsel placed reliance on decision of this Court in Smt. Sayara Devi Vs. National Insurance Company Ltd., 2006(4)RDD 1998; he also referred to decision of the Supreme Court in M/s. National Insurance Co. Ltd. Vs. Baljit Kaur and others, AIR 2004 SC 1340. In those cases, direction no doubt was given to the Insurance Company to pay amount to the claimant and recover the same from the owners but in those cases the Insurance Company had not been exonerated of the liability on account of violation of the terms of insurance policy, and therefore the decisions cannot be applied in the present case. The Insurance Company stands exonerated and no direction can be issued to it to pay compensation at the first instance and recover the same from the owners. The submission of the counsel therefore cannot be accepted.

We find no error in the order of the learned Single Judge dismissing the appeal.

The special appeal stands dismissed.

[GOVIND MATHUR],J. [S.N.JHA],CJ.

Praveen